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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/955,684	09/19/2001	Clint H. O'Connor	016295.0689 (DC-03044)	1191
7590 Adam L. Stroud Baker Botts L.L.P. One Shell Plaza 910 Louisiana Houston, TX 77002-4995			EXAMINER HOSSAIN, TANIM M	
			ART UNIT 2145	PAPER NUMBER
SHORTENED STATUTORY PERIOD OF RESPONSE			MAIL DATE	DELIVERY MODE
3 MONTHS			02/06/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	Application No. 09/955,684	Applicant(s) O'CONNOR ET AL.	
	Examiner Tanim Hossain	Art Unit 2145	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 22 November 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Potter (U.S. 2003/0023885) in view of Butka (U.S. 6,735,704) in further view of Lagod (U.S. 6,583,521).

As per claim 1, Potter teaches a computer system comprising: a plurality of processing resources operable to process data (paragraphs 0011-0012, 0043-0049); and a resource management engine associated with the processing resources, the resource management engine operable to scale the number of the plurality of processing resources in relation to a plurality of historical demand requirements (paragraphs 0043-0049, 0052). Potter does not specifically teach the use of a plurality of power supplies associated with the processing resources, which supply power to the plurality of resources, nor the scaling of power supplies providing power to the processing resources based on power-demand requirements. Butka teaches remotely controlling the allocation of power supplies to computer processing components in relation to demand (column 1, lines 20-29; and column 2, lines 45-59). It would have been obvious to one of ordinary skill in the art to combine the remote power supply management system as taught by

Butka into the computer power allocation system as taught by Potter, to arrive at a system in which remotely scaling power supplies and usage based on demand requirements is performed. The motivation for doing so lies in the fact that having multiple power supplies would allow for a larger-scale system to enjoy the benefits of efficient power consumption, such that there is no system overload due to demand or usage. Both inventions are from the same field of endeavor, namely the efficient allocation of power in a network-enabled computer system. Potter-Butka does not specifically teach the management engine comprising at least one dynamic table listing historical demand data and does not specifically teach the scaling of processing resources and power supplies based on the historical demand data. Lagod teaches the use of historical tables, statistical data, and future demand requirements to scale power supplies (column 6, lines 22-29; column 7, lines 23-42). It would have been obvious to one of ordinary skill in the art at the time of the invention to include the use of a historical demand table, as taught by Lagod, in the system which scales power supplies and processing resources, as taught by Potter-Butka. The motivation for doing so lies in the fact that having future and past demand data considered for power considerations would allow further flexibility and efficiency for the invention, possibly preventing overloads or over-consumption. All inventions are from the same field of endeavor, namely the efficient scaling of energy based on system need.

As per claim 2, Potter-Butka-Lagod teaches the system of claim 1, wherein the processing resources comprise mobile processors (Potter: 0022).

As per claim 3, Potter-Butka-Lagod teaches the system of claim 1, wherein the processing resources comprise hard disk drives (Potter: 0022).

As per claim 4, Potter-Butka-Lagod teaches the system of claim 1, wherein the resource management engine scales the number of processing resources in accordance with an enterprise-wide power strategy (Potter: 0049).

As per claim 5, Potter-Butka-Lagod teaches the system of claim 1, wherein the resource management engine scales the number of processing resources by powering up additional processing resources (Potter: 0022).

As per claim 6, Potter-Butka-Lagod teaches the system of claim 1, wherein the resource management engine scales the number of processing resources by powering down the processing resources (Potter: 0022).

As per claim 7, Potter-Butka-Lagod teaches the system of claim 6, wherein the resource management engine powering down the processing resources comprises powering off the processing resource (Potter: 0022).

As per claim 8, Potter-Butka-Lagod teaches the system of claim 6, wherein the resource management engine powering down the processing resources comprises reducing the processing resource to a lower power state (Potter: 0022).

As per claim 9, Potter-Butka-Lagod teaches the system of claim 1, further comprising a plurality of capacity tables associated with the resource management engine, the capacity tables operable to store a plurality of information regarding the processing resources and the power supplies (Potter: 0027).

As per claim 10, Potter-Butka-Lagod teaches the system of claim 1, further comprising a plurality of dynamic tables associated with the resource management engine, the dynamic tables operable to store a plurality of predictive analysis information (Potter: 0027)

As per claim 11, Potter-Butka-Lagod teaches the system of claim 1, wherein the processing resources comprise a plurality of servers (Potter: 0024).

As per claim 12, Potter-Butka-Lagod teaches the system of claim 1, wherein the processing resources comprise a plurality of racks containing a plurality of servers (Potter: 0024, 0055).

As per claim 13, Potter-Butka-Lagod teaches the system of claim 1, further comprising the resource management engine predicting demand requirements (Potter: 0027).

As per claim 14, Potter-Butka-Lagod teaches the system of claim 1, further comprising the resource management engine maintaining a power threshold among the processing resources and power supplies (Potter: 0027).

As per claim 15, Potter-Butka-Lagod teaches a method for the optimizing of power consumption by a computer system having a plurality of processing resources and a plurality of power supplies associated therewith, the method comprising: receiving a demand requirement based on historical demand data for the computer system (Potter: 0027, Butka: 5; 34-61; Lagod: column 6, lines 22-29; column 7, lines 23-30); determining if the demand requirement requires a processing resource change (Potter: 0027, Butka: 5; 34-61); adjusting the plurality of processing resources to satisfy the demand requirement (Potter: 0027, Butka: 5; 34-61); and adjusting the plurality of power resources to satisfy the demand requirement (Potter: 0027, Butka: 5; 34-61).

As per claim 16, Potter-Butka-Lagod teaches the method of claim 15, wherein determining if the demand requirement requires a processing resource change comprises consulting a plurality of capacity tables (Potter: 0027).

As per claim 17, Potter-Butka-Lagod teaches a method of claim 15, wherein determining if the demand requirement requires a processing resource change comprises deciding whether to power up additional processing resources of the plurality of power resources (Potter: 0027, Butka: 5; 34-61).

As per claim 18, Potter-Butka-Lagod teaches a method of claim 15, wherein determining if the demand requirement requires a processing resource change comprises deciding whether to power down processing resources (column 10, lines 10-34).

As per claim 19, Potter-Butka-Lagod teaches the method of claim 15, wherein adjusting a plurality of processing resources comprises powering down at least one of the plurality of processing resources when the demand requirement decreases (Potter: 0027, Butka: 5; 34-61).

As per claim 20, Potter-Butka-Lagod teaches the method of claim 19, wherein powering down processing resources comprises turning off one or more of the plurality of processing resources (Potter: 0027, Butka: 5; 34-61).

As per claim 21, Potter-Butka-Lagod teaches the method of claim 19, wherein powering down at least one of the plurality of processing resources comprises powering at least one processing resource to a lower power state (Potter: 0027, Butka: 5; 34-61).

As per claim 22, Potter-Butka-Lagod teaches the method of claim 15, wherein adjusting the plurality of processing resources comprises powering up additional processing resources when the demand requirement increases (Potter: 0027, Butka: 5; 34-61).

As per claim 23, Potter-Butka-Lagod teaches the method of claim 22, wherein powering up additional processing resources comprises integrating the additional processing resource with the already operating resources (Potter: 0027, Butka: 5; 34-61).

As per claim 24, Potter-Butka-Lagod teaches the method of claim 15, further comprising: predicting future demand requirements (Potter: 0049); and adjusting the plurality of processing resources to meet the future demand requirements (Potter: 0027, Butka: 5; 34-61).

As per claim 25, Potter-Butka-Lagod teaches the method of claim 24, wherein predicting demand requirements comprise consulting a plurality of dynamic tables, the dynamic tables listing historical demand data associated with the computer system (Potter: 0027; Lagod: column 6, lines 22-29; column 7, lines 23-30).

As per claim 26, Potter-Butka-Lagod teaches the method of claim 15, further comprising maintaining a power threshold in the plurality of processing resources (Potter: 0027, Butka: 5; 34-61).

### ***Response to Arguments***

Applicant's arguments filed on August 2, 2006 have fully been considered, but are not persuasive.

a. Applicant asserts that the previous Office Action applies "the teachings of Lagod with respect to the management of power generators to the management of both power supplies and processing resources." This is a misinterpretation of the Office Action. To clarify, Examiner asserts that Potter-Butka does teach "the resource management engine operable to scale the number of the plurality of processing resources in relation to a plurality of demand requirements, including historical demand data (Potter: paragraphs 0010-0011, 0043-0049)." Potter discusses powering resources in response to when traffic is historically the lightest, for example. Potter-

Butka also teaches “the resource management engine operable to scale the number of power supplies providing power to the processing resources in relation to demand requirements (Potter: paragraphs 0010-0011, 0043-0049; Butka: column 1, lines 20-29; and column 2, lines 45-59).”

Butka teaches adding power supplies onto the computer system when additional power supplies are necessary, for example. Therefore, Potter-Butka teaches the scaling of processing resources and power supplies in relation to demand and historical data in general, but does not specifically teach that they are scaled in relation to the specific historical demand data listed on a table. As such, Lagod is relied upon to provide a table that lists historical demand data, statistical data, and future demand requirements. These tables in Lagod are used to scale power supplies. The scaling of power supplies was mentioned to show that the historical demand tables are used in a capacity with which to scale power as needed. This provides a motivation with which to combine the teachings of Potter-Butka (scaling processing resources and power supplies in relation to demand) with Lagod’s historical tables and demand data. Therefore, Lagod is not applied to equate power generators with power supplies and processing resources, as asserted by Applicant.

b. Motivation to include the teachings of Lagod into the teachings of Potter-Butka exists, because Lagod deals with the problem of supplying resources (power, in this case) to customers in relation to customer demand. This is the exact same problem area of Potter-Butka. Potter-Butka also tackles the problem of the allocation of resources in relation to customer demand. Butka is also drawn to the allocation and scaling of power. Because Potter, Butka, and Lagod are all related to the demand of scarce resources that need to be allocated efficiently, it would be obvious to one of ordinary skill in the art to include the known method of using historical

demand tables to scale resources as necessary. The concept of historical demand tables is well known in the art of power allocation (Lagod), and therefore the artisan of ordinary skill would have known to include this concept into another system in which power is allocated (Potter-Butka).

c. In response to Applicant's argument that the Examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from Applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). Given that the use of historical demand tables is known in the art of allocating power resources, it would not be improper to include this concept into a system that allocates power resources.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period

will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tanim Hossain whose telephone number is 571/272-3881. The examiner can normally be reached on 8:30 am - 5 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jason Cardone can be reached on 571/272-3933. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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